

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Denny Densmore,	*	
Plaintiff,	*	
	*	
v.	*	Case No. 1:15-cv-00096-JL
	*	
National Board of Medical Examiners,	*	
Defendant.	*	

**MOTION TO WITHDRAW APPEARANCE WITH CLIENT CONSENT AND
CONTINUE TRIAL**

NOW COMES the plaintiff's counsel Vincent E. Nowak, Esquire, and Douglas, Leonard & Garvey, P.C. and respectfully submit the within Motion to Withdraw Appearance With Client Consent and Continue Trial, stating as follows:

1. New Hampshire Rule of Professional Conduct 1.16 (b) states that a lawyer may withdraw from representing a client under certain conditions, including where: (a) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; and (b) the representation will result in an unreasonable financial burden on the lawyer.

2. Both Attorney Nowak and Attorney King have represented Mr. Densmore in this litigation under fee agreements pursuant to which Mr. Densmore is required to pay them for their time at the rate of \$300.00 per hour and is also required to pay litigation expenses. Unfortunately, Mr. Densmore has not been able to meet his obligations under either of his fee agreements. His debt to Attorney Nowak exceeds \$25,000.00, and his debt to Attorney King's firm exceeds \$2,800.00.

3. By e-mail dated July 8, 2016, Attorney King warned Mr. Densmore that he would need to withdraw unless Mr. Densmore made a substantial payment towards reducing his balance, which at the time was \$3,851.62. Exhibit A. While Mr. Densmore did make a \$1,000.00 payment to Douglas, Leonard & Garvey, P.C. in response to this communication, he has proven unable to make any further payments.

4. Attorney Nowak gave Mr. Densmore a similar warning by text message on September 6, 2016, writing, "I can't work for free any longer." Exhibit B.

5. Trial of this matter will not only involve significant attorney time but significant expense, including expenses associated with flying the plaintiff's expert to trial and having him appear at trial. Mr. Densmore cannot afford to pay these expenses.

6. Continuing to represent Mr. Densmore will cause an unreasonable financial burden to undersigned counsel. Not only would they have to "deficit spend" with respect to their professional time, but they would have to spend their own money on expert costs with no reasonable expectation of ever being reimbursed.

7. Mr. Densmore acknowledges that his circumstances have prevented him from meeting his financial obligations under his fee agreements with opposing counsel. He therefore consents to undersigned counsel withdrawing their Appearances. Exhibit C.

8. For these reasons, undersigned counsel respectfully request that the Court allow them to withdraw their Appearances and continue the trial to afford Mr. Densmore the opportunity to obtain alternate counsel.

9. Due to the discretionary nature of the relief requested, no accompanying memorandum of law is believed to be required.

10. The relief requested will necessitate the continuance of the Final Pretrial Conference and the trial.

11. Attorney Nowak has contacted Attorney Folsom to request that the defendant assent to the relief requested herein. The defendant has yet to take a position.

WHEREFORE, Vincent E. Nowak, Esquire, and Douglas, Leonard & Garvey, P.C. respectfully pray this Honorable Court:

- A. Allow them to withdraw their Appearances;
- B. Continue the trial; and
- C. Grant such other and further relief as is just and equitable.

Respectfully submitted,
DOUGLAS, LEONARD & GARVEY, P.C.

Date: October 4, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically served this date through ECF to all counsel of record and that it was electronically mailed and mailed 1st class mail, postage prepaid, to Mr. Densmore.

/s/ Benjamin T. King
Benjamin T. King